

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6949 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BABUBHAI VALJIBHAI GAMETI

Versus

STATE OF GUJARAT

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Appearance:

MRS KETTY A MEHTA for Petitioner

MR DP JOSHI for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/11/97

C.A.V. JUDGEMENT

1. The petitioner, a driver in the office of respondent No.2, filed this special civil application and prayer has been made for direction to the respondents not to terminate his services as driver working in the office of Director of Relief and further direction to retain him in service as driver even on the basis of roster applicable to candidates of scheduled tribe.

2. The facts of the case, in brief, are that the petitioner was given the appointment in the Establishment of the Directorate of Relief which is a part of the Revenue department of the State of Gujarat under the order dated 14th August, 1986 as a driver. It is not in dispute that this appointment was purely on temporary and adhoc basis. The petitioner stated that from time to time the permanent and temporary posts of driver were sanctioned for the establishment of Directorate of Relief. At present, three drivers who are regularly appointed through employment exchange are working in the office of Director of Relief and petitioner is working on one of the sanctioned posts in the establishment of Directorate of Relief and he has already put in more than six years of service. Apart from this out of three regularly selected drivers, one Shri Viholbhai is irregularly recruited as a driver of the Relief Commissioner. However, by way of amendment of the special civil application, this plea has been given up by the petitioner. The petitioner's services came to be terminated with effect from 1st October, 1992. However, the petitioner without waiting for the service of order of termination of his service has approached to this Court by way of filing of this special civil application and this Court has protected him by grant of interim relief in terms of para-12 (B). Then the petitioner has amended the special civil application after about 16 days of filing thereof and the order of termination of his services has been brought on record and further grounds of challenge have been raised. From the order of termination of services of the petitioner it is clear that one post of driver has been abolished from the office of Director of Relief and that has resulted in termination of services of the petitioner and the amount of notice pay has been adjusted towards his dues.

3. The special civil application has been contested by the respondents by filing reply to the same. The defence has been taken that the petitioner was appointed on purely temporary basis for and during the operation of the relief work carried out by the Director of Relief Works. Six posts inclusive of two posts of drivers were decided to be discontinued under the order dated 30th September, 1992 and which has resulted in termination of the services of the petitioner.

4. The learned counsel for the petitioner contended that whatever may be the position of the strength of the posts of the driver in the office of the Director of Relief, one post of driver has fall vacant as the incumbent thereof has expired on 5-8-1996. It has next

been contended that even if in the office of the respondent No.2 if some staff has become surplus then the steps should have been taken to absorb the petitioner elsewhere in the Revenue department. Carrying this contention further the counsel for the petitioner contended that the petitioner belongs to scheduled tribe and in view of the Government resolution which provides that while terminating the services of a temporary employee due care has to be taken of the roster of the reserved quota laid down for the scheduled tribes, which has not been done in the present case. It is further contended by the counsel for the petitioner that the petitioner is working for all these years as driver in the department and as such the direction be given to the respondents to consider his case for regularisation.

5. On the other hand, the counsel for the respondents contended that the petitioner was given only temporary appointment against the temporary post and on reduction of the post he has no right to continue in the department. It has next been contended that the petitioner was only an adhoc temporary appointee. He could not have been declared surplus and his claim for absorption stands to no merits. So far as the Government resolution regarding the employees belonging to reserved categories is concerned, the counsel for the respondents contended that the petitioner has not been given the appointment against the reserved posts and as such this resolution is of little help to him. However, the learned counsel for the respondents is unable to say anything regarding the fact which has been mentioned today in the Court by the counsel for the petitioner about the death of one of the drivers and his death certificate is produced on record. The learned counsel for the petitioner has also produced on record of the special civil application, the letter of the Director of Relief to the Commissioner dated 4-7-1997 in the matter of sending the petitioner on deputation. These two documents have been produced by the counsel for the petitioner in the Court and the same are taken on record.

6. The petitioner no doubt has been given the appointment on temporary basis and on abolition of the post I do not find any illegality in the action of the respondents to terminate his services. The petitioner was only temporarily appointed and as such his claim for declaring him surplus and to absorb him elsewhere also does not stand to any merits. However, the petitioner is a scheduled tribe candidate and is working for all these years in the department, now about 11 years. The fact that the resolution of the Government will apply to the

temporary servants or not and similarly whether the appointment of the petitioner was against the reserved category or not, have not been replied by the respondents in reply to the writ petition. The petitioner was appointed after his name has been sponsored from employment exchange. One of the drivers stated to have been expired and one post, in case it is true, would have now arisen. The petitioner is working for all these years may be under the Court's order. So taking into consideration the totality of the facts of this case, the claim of the petitioner to continue him in service with reference to the vacancy which has now arisen due to the death of the one of the drivers needs consideration by the respondent No.2.

7. In the result, this special civil application is disposed of with the direction that the petitioner may make a representation to the respondent No.2 in respect of his claim to the post of driver which is stated to have been fell vacant due to the sad demise of the holder thereof and if such a claim is made then the respondent No.2 shall consider the same sympathetically as well as keeping in mind the fact that the petitioner is a scheduled tribe. The representation shall be made within a period of one month from today and the respondent No.2 shall consider the same and pass appropriate order thereto within three months next. In case the claim of the petitioner is not tenable or acceptable then a reasoned order may be passed and copy of the same may be sent to the petitioner by registered post. Interim relief which has been granted by this Court shall continue till the matter is decided by the respondent No.2 and it shall be continued for one month more from the date of issue of the order, if any, passed adverse to the petitioner on his representation. Liberty granted to the petitioner for revival of this special civil application in case of difficulty. Rule and special civil application stand disposed of in the aforesaid terms with no order as to costs.

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